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Before the
FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of Implementation of Section 8 of the Cable Television Consumer Protection and Competition Act of 1992 Consumer Protection and Customer Service	)	MM Docket No. 92-263

REPLY COMMENTS OF CONTINENTAL CABLEVISION, INC.

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SUMMARY

Continental Cablevision, Inc. ("Continental") submits these reply comments to respond to the comments of the National Association of Telecommunications Officers and Advisors ("NATOA"), et. al., concerning the appropriate federal/state regulatory framework for establishing and enforcing customer service standards.

The best way to ensure that local customer service needs are accommodated is for the cable operator and franchising authority mutually to agree to customer service standards. The next best alternative is for the Federal Communications Commission (the "FCC" or the "Commission") to adopt a set of reasonable, flexible standards that the local franchising authority may, in its discretion, adopt and enforce. The worst alternative is for the Commission to adopt rigid standards that shall apply to all cable operators without affirmative action by the local franchising authority -- i.e., NATOA's proposal.

In a transparent attempt to rewrite essential provisions of the Cable Television Consumer Protection and Competition Act of 1992 (the "Cable Act" or the "Act"), NATOA urges the Commission to adopt self-executing standards, permit local franchising authorities unilaterally to adopt standards stricter than those of the FCC, and permit local governments to

pass laws establishing stricter customer service standards that are applicable only to the cable industry. Each of these proposals contravenes Section 8 of the Cable Act and should be summarily rejected.

NATOA's proposed bifurcated enforcement scheme, with the FCC acting as ultimate arbiter of all disputes, should also be rejected. The Act confers no enforcement authority on the Commission.

In these reply comments, Continental also addresses NATOA's proposed customer service standards. We urge the Commission to reject the rigid and inflexible standards that NATOA proposes. The proposed standards are unduly -- and, at times, unfairly -- burdensome. For example, they give no consideration to events and circumstances beyond the cable operator's control. Moreover, the standards contain internally inconsistent provisions and lack sufficiently defined terms, making compliance extraordinarily difficult. And they utterly ignore the costs the standards will impose on cable operators and consumers and fail to balance those costs against the purported benefits that will be achieved. It is perhaps no coincidence, therefore, that NATOA provides no explanation for any of its proposed standards. The Commission should reject NATOA's proposed customer service standards, just as it should reject the regulatory scheme proposed by NATOA.

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Continental Cablevision, Inc. ("Continental") submits these reply comments to respond to the comments of the National Association of Telecommunications Officers and Advisors ("NATOA"), et al., concerning the Federal Communications Commission's (the "FCC" or the "Commission") role in establishing and enforcing customer service standards and the content and language of those standards.[1]

As discussed below, NATOA has proposed a regulatory scheme that contravenes the parameters of local/federal authority established by the Cable Television Consumer Protection and Competition Act of 1992 (the "Cable Act" or the "Act"). NATOA's regulatory scheme would, moreover, be

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1 See Comments of The National Association of Telecommunications Officers and Advisors, National League of Cities, United States Conference of Mayors, and The National Association of Counties, filed Jan. 11, 1993 (hereinafter "NATOA Comments").

exceedingly complex and impose excessive administrative burdens on the Commission. It would also establish "national" standards that would in many cases hinder a cable operator's ability to provide quality service tailored to the local needs of its customers and, in other cases, would impose inordinate costs that could cause cable service to become inadvertently expensive to current -- and potential -- customers.

I. NATOA'S PROPOSALS ARE INCONSISTENT WITH THE LETTER AND INTENT OF THE CABLE ACT

NATOA urges the Commission to adopt a regulatory framework for implementing and enforcing customer service standards that, if adopted, would unlawfully rewrite essential provisions of the Cable Act. Congress, recognizing the inherently local nature of cable service, limited the Commission's role in this area. NATOA, apparently dissatisfied with the Congressional framework, seeks to rewrite the Act.

The scheme Congress established is a fairly straightforward one. The FCC is authorized to establish standards.[2] Local franchising authorities, in their discretion, may adopt and enforce those (or less strict) standards.[3] The franchising authorities can also adopt

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2 Comments of Continental Cablevision, Inc., filed Jan. 8, 1993, at 44. (Hereinafter "Continental Comments").

3 Id.

stricter standards if the cable operator agrees or the standards are imposed by laws of general applicability (i.e., not merely customer service laws applicable to cable).[4] The FCC has no enforcement role, with the very limited exception of issuing interpretative rulings regarding its standards.

NATOA's proposed scheme is exceedingly complex. Both the Commission and local authorities would have establishment and enforcement responsibilities -- creating, as described more fully below, a web of confusion and imposing conflicting requirements on cable operators. What NATOA appears to be seeking is to reserve to local authorities unfettered power to make those decisions they want to make -- e.g., unilaterally imposing stricter standards than those of the FCC -- while bucking to the FCC decisions that may be tougher to explain to their constituents -- e.g., a decision to waive certain of the FCC's standards.

As discussed below, however, NATOA's scheme is fabricated out of whole cloth. It has no basis in law, contravening both the letter and intent of the Act.

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4 See Continental Comments at 48.

A. Neither The Act Nor The Legislative History Supports NATOA's "Self-Executing" Argument

As discussed in detail in our initial comments, the Cable Act sets up a two-step process for the adoption of customer service standards.[5] Under Section 8(b) of the Act, the Commission is required to establish customer service standards, which, under Section 8(a) of the Act, the franchising authorities may, in their discretion, adopt and enforce.[6]

The Act does not contain any provisions that make the Commission's standards self-executing. Rather, Congress specifically provided that only a "franchising authority may establish and enforce . . . customer service requirements of the cable operator." Act at § 8(a)(1). The legislative history of the Act affirms the need for local franchising authority involvement before the standards established by the Commission have any force or effect. According to Congress, Section 8(b) "requires the FCC, within 180 days of enactment, to establish federal customer service standards which _may_ be required in local cable franchises and enforced by local franchising authorities."[7]

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5 _See_ Continental Comments at 44.

6 _Id_.

7 H.R. Rep. No. 628, 102d Cong., 2d Sess. 105 (1992) (hereinafter "House Report").

Despite the clear terms of the Act and the legislative history, NATOA argues, without any justification, that "the customer service standards to be adopted by the Commission should be self-executing." NATOA Comments at 8. NATOA does not attempt to reconcile its position with the straightforward mandate of the Act. In fact, NATOA's entire discussion of the allegedly self-executing nature of the Commission's standards contains not a single reference to either the Act or legislative history in support of its position.[8]

B. Neither The Act Nor The Legislative History Supports NATOA's Contention That Franchising Authorities Have The Power Unilaterally To Adopt Customer Service Standards Stricter Than The Commission's Standards

NATOA's argument that local franchising authorities have the power unilaterally to adopt customer service standards that are stricter than the FCC standards is flawed in two critical respects. First, NATOA completely ignores Section 8(c)(2) of the Act, which specifically requires the franchising authorities to obtain the consent of the cable operator before adopting customer service standards stricter than the Commission's standards. Because, as explained in detail in our initial comments, the Act must be read in a way that gives meaning to each section, Section 8(a) is limited in

8 See NATOA Comments at Section II.A.1.

its scope by Section 8(c)(2).[9] Accordingly, Section 8(a) only gives the franchising authorities the ability unilaterally to adopt standards no stricter than the Commission's customer service standards.

Local franchising authorities can adopt stricter standards only if, under subsection (c)(2), they obtain the cable operator's consent. Contrary to NATOA's argument, the fact that Congress removed language from Section 8(a) that appeared in the 1984 Cable Act, which had permitted local franchising authorities to adopt customer standards only at certain times such as renewal, does not mean that Congress gave the local franchising authorities unfettered discretion unilaterally to adopt standards stricter than the FCC's. Rather, as explained in our initial comments, the removal of this language evidences Congress' intent to permit the franchising authorities to adopt and impose the Commission's customer service standards prior to renewal.[10]

Second, NATOA's reliance on Section 8(c)(1), as authorizing franchise authorities unilaterally to adopt stricter standards than the FCC's, is misplaced. That section only provides that states and local governments may adopt consumer protection laws of general applicability. The term "consumer protection laws" is not, as NATOA implies, synonymous

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9 See Continental Comments at 48.

10 Continental Comments at 48-50.

with the term "customer service standards." Section 8(c)(1) is intended to preserve the local governments' traditional right to adopt consumer protection laws of general applicability, but not to authorize local governments to pass specific laws governing the customer service standards of cable operators but not other businesses and entities.

II. NATOA'S PROPOSAL WOULD HAVE UNDESIRABLE POLICY AND ADMINISTRATIVE REPERCUSSIONS

Wholly apart from the absence of statutory support for NATOA'S regulatory scheme, there are numerous policy and practical reasons why the local franchising authorities should retain control over the adoption and enforcement of customer service standards.

A. NATOA'S Proposal Ignores The Inherently Local Nature Of Providing Customer Service

As discussed in detail in Continental's initial comments, cable television is a local business and customer service needs (and the corresponding ability to pay for the system to service those needs) vary from community to community.[11] It is hardly coincidence, therefore, that Congress recognized that the local franchising authority must retain ultimate responsibility both for adopting and

11 See Continental Comments at 45-46.

enforcing any customer service standards. Congress ordered the FCC to establish standards that local franchising authorities could adopt, but did not make these standards self-executing and thereby convert them into a set of national standards. NATOA conveniently ignores both the legislative intent and the inherently local nature of providing customer service when it urges the Commission to adopt mandatory, self-executing national standards.[12]

B. NATOA'S Proposal Would Create An Administrative Nightmare For The Commission

NATOA's approach would be an administrative nightmare for the Commission to implement, enforce, and monitor. Under NATOA's proposal, the Commission would be responsible for reviewing every waiver granted by franchising authorities.[13] Moreover, the Commission would be required to act as ultimate arbiter of all disputes between cable operators and franchising authorities.[14] Further, the Commission would be required to review the local franchising authorities' periodic reports on the operation of customer service standards to determine if the franchising authorities were complying with their

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12 See NATOA Comments at 8-10.

13 Id. at 10.

14 Id.

obligations.[15] This process undoubtedly would require increased Commission staff and resources -- all in an area in which Congress has given it no enforcement authority.

C. NATOA'S Proposal Would Create Considerable And Unnecessary Confusion For Cable Operators

NATOA's regulatory scheme would also make it unnecessarily difficult for cable operators to ensure compliance. For example, because under NATOA's scheme the FCC standards would be self-executing and the local authorities could also adopt different, stricter standards, cable operators would be subject to two inconsistent regimes.

Under NATOA's scheme, cable operators who are currently subject to local customer service standards would be required to determine, on a standard-by-standard basis, whether the existing standards are less or more stringent than the federal standards. The more stringent standard would then apply. It will not always be simple, however, to determine whether the local or federal standard is more stringent. For example, suppose a local standard requires the cable operator to answer the telephone within four rings, and the federal standard requires the operator to answer the telephone within 30 seconds. How is the cable

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15 Id. at 12.

operator to determine which is more stringent? Or, suppose the local standard requires office hours from 7 a.m. to 6 p.m. and the federal standard requires office hours from 8 a.m. to 7 p.m. Which is more stringent?

Because cable operators would be unable to know with any certainty whether their views were the same as the enforcing authorities, they effectively would be forced, under NATOA's approach, to comply with (and, significantly, measure compliance with) both standards. If, however, as Congress intended and the Act requires, the franchising authority were required to take some affirmative action before adopting the Commission's standards, this confusion would be resolved. As discussed in our initial comments, the franchising authority should be required to compare the Commission's standards to existing standards, determine which existing standards could still apply, and give the cable operator notice of its decision.[16] If the Commission's standards are self-executing, however, the franchising authority will not be required to take any action and the cable operator will be faced with two possibly quite different sets of customer service standards.

16 See Continental Comments at 46-47.

D. NATOA'S Proposal Would Force Larger Cable Systems That Are Part Of MSOs And Their Customers To Subsidize Smaller Systems

One of the cornerstones of NATOA's proposal is that the FCC standards should be enforceable against all cable systems that are part of a multiple system operator ("MSO") regardless of the size of a particular system.[17] This proposal completely ignores the fact that the economics of a cable system are determined by the size and characteristics of the particular franchise, not by whether the system is owned by an MSO. For example, if a small system cannot justify the costs of purchasing a private branch exchange ("PBX") system capable of measuring compliance with the telephone answer time standard, but is nevertheless forced to purchase such equipment to ensure compliance, the MSO's larger systems will be forced to subsidize those costs. Such a result would, of course, be unfair to the customers in the larger system, whose rates would rise commensurately. Such a result would also constitute extraordinary government intrusion into corporate management, particularly to a company like Continental that is founded on a decentralized management structure.[18]

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17 See NATOA Comments at 16-17.

18 See Continental Comments at 2.

Such a result can, and should, be avoided. Nothing in the Act or legislative history suggests or requires the Commission to consider MSO-affiliation rather than size of the individual system. NATOA's proposal is a bad idea that should be rejected.

III. THE COMMISSION SHOULD NOT ADOPT NATOA'S PROPOSED CUSTOMER SERVICE STANDARDS

NATOA urges the Commission to reject the National Cable Television Association's ("NCTA") voluntary customer service standards as a starting point for establishing standards and instead to adopt a set proposed by NATOA.[19] NATOA's standards, as discussed below, are unyieldingly rigid and contain elaborate procedures and costly requirements that are certain to escalate cable rates. Consequently, NATOA's proposed standards would degrade service, make cable service too costly for many customers, and possibly eliminate cable service in some rural areas served by small cable systems.

A. NATOA's Standards Fail To Provide Necessary Flexibility To Respond To Local Needs

NATOA's proposed standards stand in direct contradiction to Congress' expressed goal of establishing standards that will be "flexible in nature and . . . allow a local franchising authority to tailor the requirements to meet

19 See NATOA Comments at 20-22.

the needs of the local cable community."[20] Even regulatory agencies, such as the New York State Commission on Cable Television ("NYSCCT"), implicitly criticize NATOA's proposed guidelines when they urge the Commission to "be guided primarily in its creation of customer service requirements by the fact that its standards are minimum standards and that it is virtually impossible to craft a set of standards which would serve the needs of each and every community throughout the nation."[21]

While Continental believes that cable customers in all parts of the country deserve quality service, we oppose NATOA's position that rigid standards should apply to all systems without allowing sufficient flexibility for operators to tailor their service to meet the different needs of their customers in different systems (e.g., in a densely populated urban area or a farming community).

For example, NATOA proposes that telephones be answered by a person 24 hours a day.[22] Many Continental

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20 House Report at 105.

21 Comments of the New York State Commission on Cable Television, filed Jan. 8, 1993, at 8. While Continental disagrees with NYSCCT's position that the standards should be self-executing, Continental calls the Commission's attention to the NYSCCT's recognition that "the NCTA customer service standards constitute reasonable minimal customer service requirements suitable for adoption by the Commission." Id. at 9.

22 See NATOA Comments at Attachment B, p. 1.

systems do provide 24 hour telephone answering by trained customer service representatives or a professional answering service, but some of our smaller systems operate highly reputable customer service operations with less extensive live answering, based on local needs and conditions. It simply is not always cost effective for a small cable system to provide live, 24 hour telephone answering. Continental therefore continues to urge the Commission to adopt a standard requiring after hours availability in response to demonstrated community needs. Under such a standard, some small systems might decide, for example, to use automated answering equipment after normal business hours.

B. NATOA Fails To Provide Any Justification For Its Proposed Standards

One of the many flaws with NATOA's proposed standards is the absence of any explanation or justification for any of the proposed standards. NATOA merely recites, in an attachment to its comments, its proposed standards without any explanation as to why any of the specific standards is necessary or why an existing NCTA standard is inadequate. Further, NATOA fails to provide any supportive explanation as to either the effectiveness or cost of its proposed standards. Evidently, the Commission is simply expected to accept the standards based upon NATOA's word.[23]

Interestingly, however, NATOA's proposed set of standards has never been adopted in its totality by any franchising authority in the United States -- even those that have comprehensive and detailed standards. NATOA's standards appear to be a compilation of the standards that appear in some of the franchise agreements in eight cities in the United States, but some of NATOA's standards are its own creation.[24]

What NATOA neglects to point out, moreover, is that those standards that do appear in the various franchise agreements were not unilaterally imposed on cable operators by a distant federal agency, but rather are the result of negotiations between cable operators and local franchising authorities. As Attachment A to NATOA's comments demonstrates, different standards were adopted in different communities -- and not all of the standards were evidently deemed appropriate for all the communities. In short, there is no justification

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23 In a footnote to its comments, NATOA states that it intends to submit a "more refined set of standards" at a later date. NATOA Comments at 24 n.12. To the extent that NATOA's standards represent a "work in progress," as reflected by the lack of any justification for the standards, rather than concrete proposals like Continental's standards, the Commission should be wary of adopting NATOA's standards.

24 It is also important to note that not all the cable operators in the eight cities cited in the NATOA attachment are subject to the standards of their respective city. In Los Angeles, for example, of the 14 cable franchises only 10 have agreed to the customer service standards.

for concluding that a compilation of the strictest standards applied to or proposed in certain metropolitan areas should serve as a basis for national standards.

C. NATOA Fails To Consider The Costs Or Benefits Of Its Customer Service Standards

NATOA's standards utterly ignore the costs that its proposed standards would impose on cable operators and consumers and fails to balance those costs against the benefits that purportedly would be achieved. For example, NATOA would require cable operators to purchase and maintain "state-of-the-art" telephone equipment. This standard would require huge investments without regard to whether commensurate benefits would be bestowed upon customers.

As the Commission is aware, in the telephone industry "state-of-the-art" is constantly changing. Vendors of telephone systems tend to introduce new telephone hardware about every five years and software about four times a year. Continental's Pompano, Florida system recently purchased a new "state of the art" telephone system at a cost of $238,000. The software upgrades cost approximately $5,000 each. Six vendors provided bids, and because each vendor introduces new hardware about every five years, approximately every 10 months new state of the art telephone equipment is available. Thus, to comply with NATOA's standard, every cable system in the United States would have to replace its telephone system about every 10 months, at a cost of more than $100 million annually, despite the fact NATOA does not demonstrate -- or even claim -- that any benefit to consumers would result.

Similarly, NATOA would require cable operators to employ foreign language speaking operators in any community in which "a substantial number of subscribers" happens to be able to speak a foreign language, regardless of whether they can and do speak English.[25] Many of Continental's systems employ customer service representatives ("CSRs") who speak a language other than English.[26] What Continental objects to, therefore, is not the notion that in many cases quality customer service will require multilingual CSRs. Our objection is to taking NATOA's poorly drafted standards and using them as the basis for either mandatory or non-mandatory FCC standards.

NATOA's foreign language standard is but one example. Continental's criteria for employing multilingual operators is not whether the language is spoken by a substantial number of subscribers (as NATOA proposes) but whether the language is spoken exclusively by a group of subscribers. It is not necessary, for example, to provide French-speaking CSRs if virtually all French-speaking

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25 See NATOA Comments at Attachment B, p. 5.

26 See Continental Comments at 6-7.

customers also speak English. But it may be desirable to provide Spanish or Laotian or Cambodian speaking CSRs if most of those customers do not speak English or do not have household members who speak English.

NATOA's foreign language requirement by contrast, would require cable operators to have (and customers to pay for) customer service representatives who speak Spanish, French, high-school German or even Yiddish, if those languages happen to be spoken by residents of the community -- even if those customers also speak English. A cable operator forced (unnecessarily) to provide foreign-speaking representatives for these customers would not then be able to spend money on representatives who speak languages of first-generation Americans who may not yet speak English, but are not "substantial" in number. NATOA's proposal thus bears little correlation to demonstrated need or benefit. In fact, NATOA does not even claim, let alone demonstrate, that any benefit would result.

Proposals like this -- that lack any regard for cost or benefits -- are at the heart of NATOA's proposed customer service standards. Yet it is the very consumers who NATOA's standards purport to help who would pay the costs, without necessarily receiving any benefit. The only clear beneficiaries (besides telephone equipment vendors) would be the state and local telecommunications officials and their advisors and consultants who would be permanently vested to administer such rigid requirements.

D. NATOA Fails To Define The Terms Used In Its Standards

Despite criticizing the NCTA standards as too "vague" and poorly defined, NATOA proposes a set of standards that fail to define important terms. As noted above, for example, NATOA proposes that cable operators should be required to provide "state of the art" telephone equipment. But NATOA fails to define the term to give the guidance that would be necessary if this standard were to be adopted as part of the FCC's standards.

E. NATOA Fails To Provide Any Exemption For Circumstances Beyond The Operator's Control

As Continental discussed in its comments, any set of standards adopted by the Commission must incorporate a specific statement, to apply universally to all standards, that the standards will not apply in situations beyond the reasonable control of the cable operator.[27] NATOA not only fails to recognize this point, but certain of its proposed standards imply that the cable operator will be held accountable regardless of whether it had any control over the cause of non-

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27 See Continental Comments at 22.

compliance. It is but one more example of the rigidity and unreasonableness of NATOA's standards.

For example, NATOA would require cable operators to respond to and correct service outages "in no event later than 12 hours after the company is notified."[28] As exemplified by the recent hurricane in Florida, where customers were left without electricity for days or weeks, there are bound to be some events that prevent an operator from correcting outage calls within 12 hours.

F. NATOA's Standards Are Internally Inconsistent

The obligations imposed by one NATOA proposed standard often are inconsistent with the obligations imposed by other standards, making it extraordinarily difficult for operators to comply with the standards, and demonstrating the unreasonableness of NATOA's proposed standards. For example, in one of its proposed standards, NATOA requires that all repairs be completed within 48 hours. Four paragraphs later, in another standard, NATOA requires repairs that are related to outages to be completed in 12 hours. Three pages later, in another standard, NATOA alters its own service standard to require that repairs "be completed in 24 to 72 hours." Thus, from NATOA's own "standards" it is not clear if an operator has 12, 24, 48 or 72 hours to repair a problem.

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28 NATOA Comments at Attachment B, p. 2 (emphasis added).